have referred the claim for arbitration straightaway, or, alternatively, it should have responded to the respondent's letter for clarification. By its failure to reply, it can reasonably be interred that the applicant understood fully the contents of that letter. This is not a case where the policy-holder is a common man in the street who has failed to read the policy and through oversight is a few days out of time. Since the repudiation of liability on October 7, 1972, the applicant company has been advised by five different firms of solicitors. In fairness to the present solicitors of the applicant, they only came into the picture after January 8, 1977. It is inconceivable that the previous four solicitors could not understand the implication of the letter of repudiation in the light of condition 8 of the policy. All of them could not have failed to read the policy and misunderstood the intention of the letter of repudiation. In the case of Messrs. Lawrence Ting Poi Tek & Co., Malacca, the respondent's letter to them dated January 26, 1973 (Exhibit "NSC.1" attached to Mr. Ng Sing Cheong's affidavit) again refers to repudiation of liability. During that period, reference of claim to arbitration was still within time. Yet, nothing was done by any of the solicitors till March 23, 1977 when for the first time, the present solicitors of the applicant challenged the validity of the repudiation and proceeded to make the present application.

In this case, I find the affidavit of Mr. Pang Kim Hua, the manager of applicant company, does not disclose undue hardship to the applicant if the extension is not granted. The long delay in filing the present application is inordinate and inexcusable. In my view, to grant the extension would cause undue hardship to the respondent, in that eight years have elapsed since the road accident in 1969. Allowing the applicant's claim to go for arbitration at this stage would be an exercise in futility as far as the respondent is concerned. The respondent would be at a disadvantage since it would be faced with problems with regard to evidence. The main dispute in the proposed arbitration would be on the issue of whether the applicant has properly maintained the motor lorry as required by condition 3 of the policy. The lorry in question has since been sold and it would be difficult to recover the wheel of the lorry which suddenly became detached from the vehicle. The respondent has not been able to examine the defective wheel although it has requested for this exhibit as early as January 27, 1970. (See Exhibit "PKH.13").

Having regard to all the circumstances of this case, I am of the opinion that greater hardship would be caused to the respondent if the application for enlargement of time were to be granted. The long delay was not caused by the respondent. On the other hand, the applicant has failed to show 'undue hardship' except for the fact that it cannot claim the judgment sum in the Muar case against the respondent. In my opinion, this is not a proper case for the court to exercise its discretion under section 28 of the Arbitration Act. The application is accordingly dismissed with costs.

Application dismissed.

Solicitors: *R. Talalla & Co.; Shearn Delamore & Co.*

A SIGMA AIR CONDITIONING SENDIRIAN BHD. v. WORLD WIDE AGENCIES (M) SDN. BHD.

[O.C.J. (Mohamed Azmi J.) March 1, 1979]

[Kuala Lumpur — Application for Execution No. 249 of 1975]

Practice and Procedure — Execution of judgment — Writ of seizure and sale issued — Objection by person claiming he is owner of goods seized — Whether purchase of goods bona fide — Appeal against decision of Senior Assistant Registrar — R.S.C. 1957, O. 54, rr. 12 & 21; O. 57, r. 11

The plaintiffs had obtained judgment against the defendant company and had proceeded to attach the moveable property of the defendant company. The objector claimed to be the owner of the goods seized. The Senior Assistant Registrar dismissed the notice of objection and the objector appealed.

Held: (1) as the evidence showed that the goods were purchased by the objector for and on behalf of another company, it was for that other company to object and not for the objector in his personal capacity to do so;

(2) even if the objector had purchased the goods for himself, he has failed to show that the purchase was *bona fide.*

Cases referred to:-

(1) *Wood* v. *Dixie* (1845) 7 Q.B. 892.

(2) *Thompson* v. *Webster* 4 Drewery 628.

(3) *Natal Land and Colonization Company Ltd.* v. *Pauline Colliery and Development Syndicate Ltd.* [1904] A.C. 120.

The following authorities were also referred to: *Lim Ker* v. *Chew Seok Tee* [1967] 2 M.L.J. 253; *Re M.P.C.N. Andiappa Chetty & Ors.* 1 F.M.S.L.R. 8.

APPLICATION.

K.C. Loke for appellant/objector.

B.K. Tan for respondent/plaintiffs.

Defendants not represented.

Cur. Adv. Vult.

Mohamed Azmi J.: This is an appeal by the objector, Mr. Yew Fei Chwen, against the decision of the Senior Assistant Registrar dismissing his notice of objection dated December 11, 1975.

At the commencement of the hearing, counsel for the Judgment Creditors raises a preliminary objection. It is his contention that this appeal should go direct to Federal Court by virtue of Order 57 rule 11(5) of the Rules of the Supreme Court after leave has been obtained from the Registrar under rule 11(1). In the absence of such leave, the decision of the Registrar shall be final and conclusive. He also raises objection to the notice of appeal as it contains an appeal against two decisions of the Registrar given on separate dates. The first is against dismissal of notice of objection dated December 11, 1975, and the second is against another dismissal of notice of objection dated February 4, 1976. I dismiss the preliminary objection and rule that Order 57 rule 11 only applies where interpleader proceedings are heard by a judge, but when they are heard by a Registrar, Order 54 rule 21 will apply by virtue of rule 12 of the said order. As regards the defect in the notice of appeal, counsel for the objector concedes that the present appeal is only against the dismissal of the first notice of objection involving 181 items and not against the second notice of objection involving the whole property of the Judgment Debtors. The present appeal is, therefore, heard on that basis.

Briefly, the facts of this appeal are that on September 19, 1975, the plaintiffs obtained judgment against the defendant company for the sum of $17,176.75 and costs. As judgment creditors, the plaintiffs proceeded to attach the movable property of the defendant company at No. 16, Jalan Suppiah Pillai, 2½ milestone, off Ipoh Road, Kuala Lumpur. The attachment took place on November 28, 1975 under a writ of seizure and sale dated November 8, 1975. (See enclosure 7). In the notice of objection, the objector objects to 181 items of the goods attached on the ground that he is the owner of the said goods and that they are not the property of the defendant company — the judgment debtors. The objector's claim of ownership of the property is based on a Sale Agreement dated October 28, 1975; and by virtue of the sale transaction, he became the legal owner of the 181 items attached on November 11, 1975, i.e. about sixteen days before the date of attachment.

In my judgment, there are two main issues in this case: —

(1) Whether the objector had purchased the property at the time of attachment.

(2) Even if the objector had purchased the property, whether the transaction was *bona fide*.

On the first issue, there is material contradiction between the notice of objection dated December 11, 1975 and the affidavit of the objector sworn on January 13, 1976. In the notice, the objector "of No. 122, Birch Road, Seremban", claims to be the owner of the attached goods. But in paragraph 4 of his affidavit, he claims the said goods to be the property of Syarikat Federal Auto Air-Conditioning (hereinafter referred to as "Federal Auto"), and that he purchased the goods on November 8, 1975 on behalf of the said Federal Auto, whose principal place of business is at No. 16 Jalan Suppiah Pillai, 2½ milestone Jalan Ipoh, Kuala Lumpur, of which the objector and one Yap Nyuk Fatt are partners. (See Exhibit "YFC 3"). It is pertinent to note the address of Federal Auto and the business premises of the Judgment Debtors where the attachment took place are the same. Be that as it may, the learned Registrar is correct in coming to the conclusion that when the objector purchased the goods by Sale Agreement (Exhibit "YFC 1") for the sum of $55,000, he did so on behalf of Federal Auto. In the event, there is absence of intention to pass the property to the objector. By the objector's own admission, the intention is to pass the property to Federal Auto. It is, therefore, for Federal Auto to object and not for the objector in his personal capacity to do so. On this ground alone, I am of the view the objection was properly dismissed by the Registrar.

On the second issue, there was ample evidence for the Registrar to come to the conclusion that, even if the objector had purchased the goods for himself and not for Federal Auto at the time of attachment, the transaction was not *bona fide*. It is common ground that —

(a) the objector and Yap Nyuk Fatt are the two partners of Federal Auto;

(b) Yap Nyuk Fatt is also a director of Judgment Debtor Company;

(c) the business address of Federal Auto and the business premises of Judgment Debtors where the attachment was carried out, are the same;

(d) the objector and Yap Nyuk Fatt knew the Judgment Debtor Company was insolvent and that the execution was pending against the company;

(e) despite knowledge of the insolvency of the Judgment Debtor Company, a sale agreement was concluded purporting to transfer the Judgment Debtors' assets to the objector acting on behalf of Federal Auto;

(f) before the attachment, the objector approached the plaintiffs to withhold the execution. (See affidavit of Tan Kim Teng, the Managing Director of Judgment Creditor Company, affirmed on January 24, 1976).

All these facts clearly show that the sale transaction is not *bona fide*. As such, the objector does not have a good claim to the goods. It is true that in *Wood* v. *Dixie*[1] it was held that a sale of property for good consideration is not, either at common law or under statute fraudulent and void, merely because it is made with the intention to defeat the expected execution of a judgment creditor. That case is distinguishable, in that the conveyance there was made *bona fide*, whereas in this case the sale transaction is anything but *bona fide* having regard to all the circumstances of the case. In *Wood* v. *Dixie* a conveyance of property was made by one Phillips to the plaintiff in October 1843. The plaintiff had lent money to Phillips to relieve him from an execution at the suit of one Norton. Phillips, being unable to pay, executed the said conveyance to the plaintiff. At the hearing, it was contended that this conveyance was fraudulent as against Beckett, the execution creditor. On appeal, the court held that there was a misdirection to the jury when they were told that, although the conveyance was made *bona fide*, it would yet be fraudulent if made with intent to defeat the execution. In the present case, however, the purchase is not made *bona fide* having regard to all the circumstances. The sale agreement is colourable. There is no conceivable reason why the objector as a prudent businessman would agree to purchase the goods from the Judgment Debtor Company which he well knew to be insolvent. His partner, Yap Nyuk Fatt, is a director of Judgment Debtor Company. This is far-removed from *Wood's* case, where Phillips conveyed the property to the plaintiff because the plaintiff had lent him money. In my view, in the present case, the purchase is clearly not *bona fide*. If the purchase had been *bona fide* as in *Wood's* case, then the fact that it was made with the intention to defeat the expected execution of the Judgment Creditor does not render the purchase void. The test of *bona fide* of the transaction was also applied in *Thompson* v. *Webster*.[2] The fact that the sale agreement is colourable is also demonstrated by the admission of the objector that he purchased the goods on behalf of Federal Auto. It cannot be disputed that when the Sale Agreement was executed on October 28, 1975, Federal Auto had not come into existence. From Exhibit "YFC 3", Federal Auto was registered on November 27, 1975, although it commenced business on November 1, 1975.

The Sale Agreement was thus made by the objector for the benefit of Federal Auto which, at the time of execution, was not yet in existence. The objector cannot claim ownership as the goods are meant for Federal Auto. Nor can the ownership in the property pass to Federal Auto on the authority of *Natal Land and Colonization Company, Limited* v. *Pauline Colliery and Development Syndicate, Limited.*[3]

Where property of a judgment debtor has been attached by a judgment creditor, an objector in objection proceedings must show that he is the lawful owner of the property at time of attachment. If such ownership has been obtained by purchase or otherwise, the court must be satisfied that the transaction is *bona fide*. In determining whether the transaction is *bona fide*, it should be decided on the facts of each particular case. In the present case, the objector has failed to show that the purchase is *bona fide*. As such, the objection has been correctly dismissed.

In conclusion, although the Registrar has made a mistake in stating that the attachment was effected on October 28, 1975 instead of November 28, 1975, his decision in dismissing the objection is correct, having regards to the facts of this particular case.

This appeal is accordingly dismissed with costs.

Appeal dismissed.

Solicitors: *Loke Kok Cheong; Sothi & Ang.*

EILEEN KUOK v. PENGERUSI, PERBADANAN KEMAJUAN BUKIT FRASER, PAHANG

[O.C.J. (Salleh Abas F.J.) March 7, 1979]
[Raub — Originating Motion No. 4 of 1977]

Local Government — Rating — Annual notice — Rent property could command — Actual Rent — Town Board Enactment (F.M.S. Cap. 137), s. 44(1).

In this case the respondent had raised the annual value of the premises for purposes of assessment to $17,400. The appellant objected and appealed against the assessment. The appeal was based on the ground that the premises were let for only $4,200 per annum.

Held: (1) there was evidence that the premises could be let for more than $4,200 per annum and the failure of the respondent to assess the premises at that amount was not contrary to the provisions of the Town Board Enactment;

(2) the respondent was justified in assessing the premises at $17,400 instead of $4,200.

Cases referred to:-

(1) *Robinson Bros. (Breweries) Ltd.* v. *Houghton & Chester-le-Street Assessment Committee* [1937] 2 K.B. 445.

(2) *Poplar Assessment Committee* v. *Roberts* [1922] A.C. 93, 118.

(3) *Tiong Hin Realty Sdn. Bhd.* v. *Chairman, Majlis Bandar, Kuantan* [1975] 1 M.L.J. 215.

ORIGINATING MOTION.

J.J. Puthucheary for the appellant.

P.S. Abraham for the respondent.

Cur. Adv. Vult.

Salleh Abas F.J.: This is an appeal under section 44(1) of the Town Board Enactment (F.M.S. Cap 137). The respondent is the Chairman of Perbadanan Kemajuan Bukit Fraser, Pahang (for the purpose of this judgment referred to as the "Perbadanan"). It is a statutory body established under Pahang Enactment No. 4 of 1968, entrusted with the duty "to promote residential, industrial and commercial development or any form of tourist attraction amenities within the Fraser Hill area" (section 3(1)). The Town Board area of the Fraser's Hill is placed under the jurisdiction of the Perbadanan, and the Town Board Enactment of F.M.S. Cap. 137 is made applicable to the Perbadanan with certain appropriate modifications (section 11).

The appellant is the registered proprietor of land comprised under Certificate of Title No. 3201, Lot 219, Mukim of Tras. A cottage known as Muar Cottage is built on this land. The property is within the area of the Town Board of Fraser's Hill which is under the jurisdiction of the respondent. The property is rented out by the appellant to one Mrs. P. Beewick on a yearly rental of $4,200. In an assessment exercise involving properties in the Town Board area of Fraser's Hill on November 12, 1976, the respondent raised the annual value of Muar Cottage to $19,000, and later on objection by the appellant, the annual value was reduced to $17,400. The appellant being still dissatisfied with the assessment, appealed to the court against the respondent's decision in assessing the annual value of Muar Cottage at $17,400 instead of at $4,200. The reduction from $19,000 to $17,400 represented the value of furniture which had to be excluded; otherwise the valuation may not be legal and proper.

The appeal is based on the ground that the respondent had acted contrary to the provisions of the Town Board Enactment by assessing Muar Cottage at $17,000 per annum when the rent received is only $4,200 per annum.

The properties involved in this assessment exercise fall into three categories —

(1) premises run like hotels or guest houses such as Government guest houses;

(2) dwelling houses which are owner-occupied; and

(3) dwelling houses which are rented out on yearly basis.

According to Wan Malik bin Wan Mohamed, whose expert opinion the respondent relied on in the assessment exercise, Muar Cottage is included in category (3). I agree with the valuer as to the exclusion of properties in categories (1) and (2) from comparison with Muar Cottage. Hotels and Guest Houses or Rest Houses are not rented on yearly basis but on daily and room to room basis. As to the owner-occupied dwelling houses, I accept the evidence of Wan Malik, that for such premises the estimated gross annual rental which they might reasonably be expected to let would be less than that which might be expected of a rented-out premises like Muar Cottage. I find nothing wrong in this approach. If at all, it is in fact beneficial to the appellant. Examination of the list of owner-occupied premises which is annexed to Wan Malik's affidavit of July 1, 1978, reveals the